



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/141262

PRELIMINARY RECITALS

Pursuant to a petition filed May 30, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was commenced on June 27, 2012, recommenced and rescheduled and ultimately concluded on February 07, 2013, all via telephone. The reason for all of this was because the right witnesses were not always present; Disability Rights of Wisconsin was involved (though they did not appear at any of the hearings) and needed to review records and because the parties were given time to review each other's financial records relative to the case.

The issue for determination is whether the agency correctly sought to discontinue Petitioner's Family Care Program participation for failing to pay cost share.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: John Heister

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497
and
Troy Newmeister of Community Care

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County. Petitioner was represented throughout these proceedings by his community spouse.
2. In May 2012 Petitioner was informed that his Family Care Program (FCP) eligibility was to end for failing to make his full payment for his cost of care. By the end of May 2012 there was an arrearage of approximately \$3000.
3. Petitioner has been a Family Care Program (FCP) participant since at least late 2007. Until May 2010 Petitioner had a cost share. In June 2010 Petitioner became subject to a spenddown. Additionally, he was billed for his room and board.
4. A review of the case management organization's (CMO) records ultimately revealed that it had not accounted for Petitioner's contributions to his cost of care correctly in that it was putting too much of Petitioner's payment into the room and board account rather than the spenddown account. This was rectified but still left an arrearage for Petitioner's contribution to the cost of care.
5. Petitioner is currently a group 'C' FCP participant and has been since June 2010. The agency determined Petitioner's total monthly gross income to be \$3550-3600 during period from 2010 through 2012. After a \$20 disregard and a health insurance premium of \$960.70, Petitioner's spenddown for the period has ranged from \$1987 to \$2059.
6. Two other appeals have been filed with the Division of Hearings and Appeals on behalf of Petitioner; one in 2008 (Division of Hearings and Appeals case # 89911) that appeared to be in regard to cost share/spenddown and possible spousal impoverishment. That appeal was abandoned and dismissed by the Division of Hearings and Appeals. The second was filed in 2010 (#109686) in regard to a discontinuance of Medicaid for failing to report income changes. A hearing was held and the discontinuance upheld; i.e., the appeal was dismissed.

DISCUSSION

The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. Also see *Medicaid Eligibility Handbook (MEH)*, §29.1.

People eligible for Family Care Medicaid fall into one of the following categories:

Group A eligibility

1. People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.
2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care financial and non-financial requirements and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

Group B eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

Group C eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)

Medicaid Eligibility Handbook (MEH), §29.3.1.

These definitions make apparent the fact that the category within which a participant is Family Care Program eligible is income dependent. A person is required to pay part of cost of care and that category determines whether they pay a cost share or a spenddown. Further, if a Group C participant is married a person may have both a cost share and a spenddown. *MEH, §28.5.2.* The calculation of a person's contribution to his or her cost of care can be affected by spousal impoverishment and, if the FCP member is the custodial parent, a dependent family member deduction. Finally, the institutionalized FCP participants are expected to use their own income to pay the cost of room and board. *See 2012 Family Care Programs Contract, section F, Room and Board; available online at <http://www.dhs.wisconsin.gov/mltc/2012/2012Contract.htm>.* Neither cost share nor spenddown are necessarily fixed obligations; cost share, especially can change monthly. Rent, too, is not fixed, though does not vary monthly as can cost share and spend down obligations.

A Group B member must meet a cost share obligation. A Group C FCP participant person must meet a monthly spenddown to maintain FCP eligibility. *See MEH, §28.5.2.* Payment of that obligation is a condition of eligibility. *MEH, § 28.8.4.* Indeed, when an economic support agency is informed by a managed care organization that an enrollee has not met the cost share or spenddown obligation, the member will be disenrolled. *MEH, §29.5.2.4; also see §11.1.* There is no good cause for failing to pay a cost share/spenddown.

As Petitioner's gross income is approximately \$3600.00, he currently falls into the Group C category of Family Care eligibility. Additionally, he is married and must, therefore, incur a spenddown and potentially meet a cost share as well. *See MEH, §28.5.2.*

The argument on behalf of Petitioner is that the amount of the required contribution to the cost of care has been wrong for years. It is an undefined, unspecified error in the cost share and/or spenddown for an unspecified month or period of time that is alleged.

At this point I note that the Division of Hearings and Appeals has a quasi-judicial function whereby it reviews particular and specific actions or decisions by the agencies charged with administering benefit programs based upon a request for a hearing challenging that specific agency action or decision. Here there has been no appeal and description of a specific contribution to the cost of care calculation to review. There is no legal authority to order an audit of months or years of calculations. An appeal of a negative action by a county agency concerning Medicaid, including Family Care, must be filed within 45 days of the effective date of the action. *See Wis. Stat. §§ 49.45(4) and 49.50(8); Wis. Admin. Code § HA 3.05(3); and Income Maintenance Manual, II-G-3.4.0.* Two other appeals have been filed on behalf of Petitioner by his spouse. The 2008 appeal was with regard to cost share but as neither Petitioner nor his spouse appeared it was dismissed. There is no record of a request for a rehearing or an appeal for that case. The 2010 appeal did not relate to cost of care. The Division of Hearings and Appeals can only make a determination on the merits of a matter if there is jurisdiction, i.e., legal authority to do so. There is no jurisdiction if a hearing request is untimely. Clearly, Petitioner and spouse are aware of the appeal process yet there have been no other appeals filed to challenge the cost share or spenddown.

The issue for this case is whether or not Petitioner has paid all of the contribution to his cost of care as required. The ultimate question for purposes of this appeal, however, is not the precise dollar amount of

the cost share and/or spenddown; rather it is whether it has been paid. His representative, his spouse, contends that Petitioner has overpaid and she has, therefore, refused to make a payment in May 2012. Considerable effort in this hearing process went into determining whether Petitioner had overpaid his cost of care.

It appears here that Petitioner's spouse has been making her own calculations as to the amount of the cost of care contribution and it is upon this that she argues that she has overpaid. The economic support agency provided its calculations after the final hearing here and, in comparing the income noted by the agency on worksheets, to the income noted for Petitioner, it appears that Petitioner has used net income instead of gross and assumed a dependent deduction that is not allowed for Group C spenddown cases; it applies only in Group B cost share cases. See *MEH*, §§28.8.3.1, 28.8.3.2 and 28.8.4.

So again, the question here is whether it is more likely than not that Petitioner's contribution to his cost of care has not been paid. The FCP agency has, however, reviewed its records and adjusted balances that were improperly credited to room and board accounts as opposed to the cost share account. For the final hearing the CMO submitted a summary of Petitioner's cost of care required contribution from September 2011 through the end of 2012 and it makes apparent that there has been a running arrearage that reached slightly over \$3000 by the end of May 2012. Again, I do not need to determine the exact amount of that arrearage. It is clear that there was arrearage and Petitioner was not paying the full cost of care contribution.

I am sustaining the discontinuance of FCP eligibility for failing to pay the full cost of care contribution. Petitioner has been billed for room and board and required to meet a spenddown since 2010 as he is a Group C FCP participant. Ultimately the problem here is that his spouse has been making payments toward the cost of care but has not been making sufficient payments to meet the full cost of care obligation; apparently because her records indicate that the contribution should be lower than determined by the CMO and economic support agency. Those records suggest that she is not making the spenddown calculation but is still using a cost share calculation applicable to a Group B FCP member. There is an undefined error alleged but there has been no appeal as to the amount of the room and board or spenddown. Even if this were a timely appeal as to the calculation it is not clear where the error is alleged to be. Indeed, Petitioner's spouse concedes that she has not been paying what has been billed but argues that the wrong amount has been billed but without an appeal or showing as to where the error in the billing has occurred.

Conversely, the CMO records do show an ongoing arrearage; those records have been reviewed during the pendency of this case and continue to show an arrearage as alleged. The CMO and economic support agency have the burden of proof by a preponderance of the evidence and their submissions are sufficient to demonstrate by preponderance that Petitioner has not been making the full cost of care contribution.

CONCLUSIONS OF LAW

That Petitioner's FCP participation may be discontinued for failing to pay his contribution to the cost of his care.

Now therefore, it is

ORDERED

That this appeal is dismissed

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

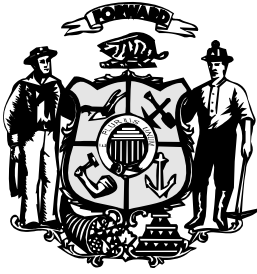
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of April, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 4, 2013.

Racine County Department of Human Services
Office of Family Care Expansion